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Supreme Court, U.S.
FILED
OCT 2 2 2003
OFFICE OF THE CLERK

No. 03-467

In The
Supreme Court of the United States

MAMIE L. EDWARDS a/k/a
MAMIE LOU KING and LEROY KING,

Petitioners,

v.

LYNN GERALD, JR., et al.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

BRIEF FOR RESPONDENT UNIVERSAL PROPERTY AND CASUALTY INSURANCE COMPANY

NANCY W. GREGOIRE
Counsel of Record
MATTHEW D. KLEIN
BUNNELL, WOULFE, KIRSCHBAUM
KELLER, MCINTYRE & GREGOIRE P.A.
888 E. Las Olas Blvd.
Ft. Lauderdale, FL 33301
954.468.7316

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
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QUESTIONS PRESENTED

As to Respondent Universal Property and Casualty Insurance Company:

I. Whether the Court should exercise its discretionary jurisdiction where the Petition fails to establish any of the standards for certiorari review.

II. Whether the Eleventh Circuit's affirmance of the summary judgment in favor of Universal is correctly based upon the Kings' lack of an insurable interest in the real property covered by Universal's policy.

CORPORATE DISCLOSURE STATEMENT

Universal Property and Casualty Insurance Company is a wholly owned subsidiary of Universal Heights, Inc.

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OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Eleventh Circuit, included in the Kings' Appendix at A2a to A5a, is found in *Edwards v. Gerald*, Case No. 02-11952, In the United States Court of Appeals for the Eleventh Circuit.

The unpublished opinion of the United States District Court for the Middle District of Florida, included in the Kings' Appendix at A6a to A21a, is found in *Edwards v. Capalbo*, Case No. 2:01-cv-133-FTM-29DNF, In the United States District Court for the Middle District of Florida.

STATEMENT OF BASIS FOR JURISDICTION

The Kings attempt to invoke the Court's jurisdiction under 28 U.S.C. § 1254(1). The decision of the Eleventh Circuit was entered on January 13, 2003. The Kings' Petition for Rehearing was denied on March 7, 2003. The certificate of service of the Petition states that it was served on May 12, 2003, within 90 days of entry of the Order denying the Petition for Rehearing, as required by Supreme Court Rule 13.1.

Notwithstanding the certificate, the Petition was not received in counsel's office until July 21, 2003. It was docketed with this Court on September 30, 2003. Universal does not believe the Petition is timely.

STATUTORY PROVISIONS INVOLVED

Universal does not believe there are any constitutional provisions involved in the Kings' claim against

Universal. The claim is simply a contract dispute governed by Florida state law.

The sole relevant statutory provision is Florida Statute section 627.405 (2001), which provides:

> (1) No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.
>
> (2) "Insurable interest" as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.
>
> (3) The measure of an insurable interest in property is the extent to which the insured might be damnified by loss, injury, or impairment thereof.

STATEMENT OF THE CASE

The Kings filed suit against Universal and others in the United States District Court for the Middle District of Florida. They claimed that the district court had jurisdiction under 28 U.S.C. § 1331, which provides that district courts have jurisdiction over all civil actions arising under the Constitution or laws of the United States, and under 28 U.S.C. § 1332, which provides diversity jurisdiction.

The Kings' "Second Amended Complaint" alleged that they were seeking a total of $435,000 from Universal for "not living up to the homestead exempt primary resident

policy" issued by Universal to the Kings for property located at 2654 Saint Charles Street, Fort Myers, Florida 33916 for the period August 2, 1999 through August 2, 2000. The Kings' "Second Amended Complaint Breach of Primary Insurance Home Ownership Policy Lawsuit Notice" alleged in addition that Universal had violated certain of the Kings' constitutional rights, including those under the Thirteenth and Fourteenth Amendments, but failed to specify any particular violation.

Universal moved for entry of summary judgment in its favor on all of the Kings' claims. On March 19, 2002, the district court entered its Order granting Universal's Motion and closing the file. The Order concluded on undisputed facts that the Kings lost any insurable interest in the property on February 23, 2000, when it was sold at a judicial sale, and that Universal thus had no obligation under the policy for the arson damage to the property on April 23, 2000 (A3a-4a).

The Kings appealed the district court's Order to the Eleventh Circuit, which affirmed the Order on the basis that the Kings failed to demonstrate error.

SUMMARY OF ARGUMENT

The Court providently exercises its discretionary jurisdiction to resolve inter-circuit conflicts, federal-state conflicts on important federal questions, and gross departures from the accepted and usual course of judicial proceedings. Here, none of those grounds, or any other compelling reason for review, exists.

The Kings' Petition also fails to exhibit any error on the part of the Eleventh Circuit or the Middle District of Florida. The undisputed facts show that the property covered by the Policy was no longer owned by the Kings at the time of the arson.

ARGUMENT

I. THE COURT SHOULD NOT EXERCISE ITS DISCRETIONARY JURISDICTION BECAUSE THE PETITION FAILS TO ESTABLISH ANY BASIS FOR CERTIORARI REVIEW.

Supreme Court Rule 10 provides that the Court grants certiorari review only for compelling reasons. Among those reasons are: (a) resolution of conflicts between circuit courts; (b) resolution of conflicts between a circuit court and a state court of last resort on an important federal question; and (c) prevention of a serious departure from the accepted and usual course of judicial proceedings.

None of those standards exists here. The Kings alleged only that Universal declined to pay them under the Universal policy for damages to a property that they no longer owned at the time of the damage. The Kings' rights under the policy were governed by the terms of the policy itself and Florida, not federal, law. *See, e.g., Allstate Ins. Co. v. Prasad*, 991 F.2d 669, 671 (11th Cir. 1993); *Claussen v. Aetna Cas. & Sur. Co.*, 865 F.2d 1217, 1219 (11th Cir. 1989).

While the Petition states the Court's review standards, and also claims violations of the First, Fifth, Eighth, Thirteenth, and Fourteenth Amendments to the Constitution, it fails to support those bare legal statements with any facts

showing that any of the review standards are met or that any of the Constitutional Amendments were violated.

As to intra-circuit conflict, the Kings claim that the Eleventh Circuit's decision in this case conflicts with a decision of the Fifth Circuit. The only cited Fifth Circuit decision is *Weitner v. United States*, 309 F.2d 45, 46 (5th Cir. 1962), which discusses homestead issues. It does not apply to the Kings' claim against Universal.

The Kings' claim that there is a conflict between the Eleventh Circuit's decision and a decision of the Florida Supreme Court necessarily relies on one of the four Florida Supreme Court decisions cited in the Petition. Three of the decisions involve homestead issues and are therefore irrelevant to the Court's jurisdiction with respect to the claim against Universal. While the fourth case, *Jones v. American Eagle Insurance Company*, 108 So. 165 (Fla. 1926), discusses insurable interest, it does so in the context of personal property and the specific terms of the policy at issue there. The case does not support the Kings' contention of conflict jurisdiction.

The Kings also cite the Court's final review standard, that the Eleventh Circuit's decision so far departs from the accepted and usual course of judicial proceedings to warrant this Court's supervisory intervention. Nothing in the Petition or the decision supports the contention.

II. THE ELEVENTH CIRCUIT'S AFFIRMANCE OF THE DISTRICT COURT'S DECISION IN FAVOR OF UNIVERSAL IS CORRECTLY BASED UPON THE KINGS' LACK OF AN INSURABLE INTEREST IN THE REAL PROPERTY COVERED BY UNIVERSAL'S POLICY.

Under Florida law, no contract of property insurance or any interest in property is valid or enforceable "except for the benefit of persons having an insurable interest in the things insured as at the time of the loss." Fla. Stat. § 627.405(1) (2001). An "insurable interest" is defined as "any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment," and the measure of an "insurable interest" in property is the "extent to which the insured might be damnified by loss, injury, or impairment thereof." Fla. Stat. § 627.405(2), (3) (2001).

Under the statute, where a putative insured has no insurable interest in the property covered by the policy at the time of the loss, the insurance is void on the basis of Florida public policy as nothing more than a wagering contract. *See, e.g., Lloyd v. Foremost Ins. Co.*, 478 So. 2d 1152, 1153 (Fla. App. 1983). The "notion that parties can create an insurable interest by contracting for it has been expressly rejected in Florida." *Corat International, Inc. v. Taylor*, 462 So. 2d 1186, 1187 n.2 (Fla. App. 1985).

Similarly, even if there was at some time a valid insurable interest, where the insured "parts with all interest in the property prior to the loss, it is not covered." *Morgan v. American Sec. Ins. Co.*, 522 So. 2d 454, 455-56 (Fla. App. 1988). In the case of the sale of real property, the purchaser, whether or not in full possession, has the

"sole and unconditional ownership" for purposes of insurable interest. *Peninsular Fire Ins. Co. v. Fowler*, 166 So. 2d 206, 208 (Fla. App. 1964).

In this case, the arson loss for which the Kings claimed damages under the Universal policy occurred on April 23, 2000. As the district court concluded on undisputed facts, the Kings' "insurable interest" in the property terminated before that time, with the February 23, 2000 judicial sale. At that time, according to Florida law, the policy was rendered null and void and Universal was relieved of any obligation to pay claims for losses related to the property after that date.

As the Eleventh Circuit and Middle District of Florida correctly concluded on undisputed facts, Universal was entitled to entry of summary judgment in its favor.

CONCLUSION

For the foregoing reasons, the Petition should be dismissed for lack of jurisdiction. Alternatively, the Eleventh Circuit's decision should be affirmed.

Dated: October 22, 2003

Respectfully submitted,

NANCY W. GREGOIRE
Counsel of Record
MATTHEW D. KLEIN
BUNNELL, WOULFE, KIRSCHBAUM
KELLER, MCINTYRE & GREGOIRE P.A.
888 E. Las Olas Blvd.
Ft. Lauderdale, FL 33301
954.468.7316